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**BY U.S. CERTIFIED MAIL**

March 5, 2018

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: *California Sportfishing Protection Alliance* – Settlement of Notice of Intent to Sue Letter  
Sent to Solano Garbage Company; 45-day review

Dear Citizen Suit Coordinators,

On November 22, 2017, California Sportfishing Protection Alliance, pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365, served a notice of intent to sue on Solano Garbage Company with copies to the United States Environmental Protection Agency and U.S. Department of Justice. On March 3, 2018, CSPA and Solano Garbage Company entered into an out-of-court settlement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Although not required by 40 C.F.R. § 135.5, the parties are voluntarily submitting the settlement agreement to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

Michael R. Lozeau, Lozeau Drury LLP  
Attorneys for California Sportfishing Protection Alliance

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Thomas Bruen, Counsel for Solano Garbage,  
tbruen@tbsglaw.com

Encl.

MAR 08 2018

## **SETTLEMENT AGREEMENT**

**WHEREAS**, the California Sportfishing Protection Alliance ("CSPA") is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement and restoration of waters of the State of California, including the Suisun Marsh and Suisun Bay.

**WHEREAS**, Solano Garbage Company ("Solano Garbage") operates a waste transfer facility located at 2901 Industrial Court in Fairfield, California ("Facility").

**WHEREAS**, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS00001 [State Water Resources Control Board], Water Quality Order No. 92-12 DWQ (as amended by Water Quality Order 97-03-DWQ, and then subsequently amended by Water Quality Order 2014-0057-DWQ), issued pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. §1342 (hereinafter "General Permit").

**WHEREAS**, the General Permit includes, among other things, the following requirements for all permittees, including Solano Garbage: (1) develop and implement a storm water pollution prevention plan ("SWPPP"); (2) control pollutant discharges using best available technology economically achievable ("BAT") for toxic pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants to prevent and reduce pollutants to achieve BAT/BCT standards; and (3) implement BAT and BCT through the development and application of Best Management Practices ("BMPs"), which must be included and updated in the SWPPP.

**WHEREAS**, on November 27, 2017, CSPA served Solano Garbage with a notice of intent to file suit ("60-Day Notice") under Sections 505(a)(1) and (f) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the General Permit.

**WHEREAS**, CSPA contends in its 60-Day Notice that, among other things, Solano Garbage has repeatedly discharged storm water in violation of the General Permit and the Clean Water Act. Solano Garbage denies all allegations set forth in the 60-Day Notice.

**WHEREAS**, CSPA has reviewed the Facility and the SWPPP maintained by Solano Garbage and has determined that Solano Garbage has committed to take significant steps to reduce the discharge of contaminants from the Facility by installing a retention basin as described below.

**WHEREAS**, Solano Garbage and CSPA view their respective roles in improving Solano Garbage's compliance with the Clean Water Act as a collaborative exercise and have worked together to agree upon methods to improve storm water management.

**WHEREAS**, the parties expect that, as a result of their collaboration, Solano Garbage will be able to reduce or eliminate the pollutants that would be discharged from the Facility via storm water and improve its compliance with the Clean Water Act.

**WHEREAS**, the Parties, through their authorized representatives and without either adjudication of CSPA's claims or admission by Solano Garbage of any alleged violation or other wrongdoing, choose to resolve in full CSPA's allegations in the 60-Day Notice through settlement leading to improved storm water management rather than incurring the costs and uncertainty of litigation.

**WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter by mutual agreement and without litigation.

**WHEREAS**, the Parties have entered into a Tolling Agreement which is attached hereto as Exhibit A and hereby incorporated by reference.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and Solano Garbage hereby agree as follows:

#### **I. COMMITMENTS OF SOLANO GARBAGE**

- 1. Best Management Practices:** Not later than September 30, 2018 Solano Garbage shall install the retention basin and accompanying structures described in the "Notice of Non-Applicability Technical Report For The Solano Garbage Company" dated January 2018 ("Technical Report") and attached hereto as Exhibit B. The retention basin installed by Solano Garbage shall be substantially the same as the basin described in the Technical Report, subject to any revisions required by the Regional Water Quality Control Board ("Regional Board"), and shall include the same or greater capacity to retain storm water.
- 2.** Notwithstanding the foregoing, should the Regional Board or any other governmental entity with authority over the proposed retention basin object to the proposed retention basin as proposed by Solano Garbage, Solano Garbage and CSPA shall enter into good faith negotiations for an alternative resolution of the issues involved in CSPA's 60-Day Notice. If the Parties fail to agree to alternative best management practice(s) ("BMPs") by September 30, 2018, CSPA shall be free to pursue the claims included in the 60-Day Notice consistent with the Tolling Agreement.
- 3. Amendment of SWPPP:** By no later than September 30, 2018, Solano Garbage shall amend its SWPPP to comply with the requirements of the General Permit and to incorporate the retention basin listed in Paragraph I.1 above. By no later than September 30, 2018, Solano Garbage shall prepare an operations and management plan for the retention basin which shall be incorporated into the SWPPP and uploaded to the State Water Resource Control Board's publicly accessible SMARTs database.



## II. MITIGATION, FEES, AND COSTS

4. **Mitigation Payment:** In recognition of the good faith efforts by Solano Garbage to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by Solano Garbage of any penalties for any violations occurring up to and including the Effective Date of this Agreement, which may have been assessed in this action if it had been filed and proceeded to trial, the settling parties agree that Solano Garbage will pay the sum of twenty five thousand dollars (\$25,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects within the Suisun Bay watershed and the Sacramento-San Joaquin River Delta, relating to water quality improvements in that area. Solano Garbage shall submit this payment within thirty (30) days of the Effective Date. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, #600, Oakland, CA 94612, Attn: Tim Little. Solano Garbage shall submit copies to CSPA via U.S. mail of the checks and correspondence it sends to the Rose Foundation when making the payments. The Rose Foundation provides notice to the Settling Parties within thirty (30) days of whenever the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.
5. **Reimbursement of Fees and Costs:** Solano Garbage shall reimburse CSPA in the amount of seventeen thousand dollars (\$17,000) to defray CSPA's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Agreement, bringing these matters to Solano Garbage's attention, and negotiating a resolution of this action in the public interest. Payment shall be made by Solano Garbage within thirty (30) days of the Effective Date. Payment by Solano Garbage to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP," and shall constitute full payment for any and all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection with CSPA's claims, up to and including the Termination Date of this Agreement. This attorneys' fees and costs payment and the mutual releases in Paragraphs I.9 and I.10 will not preclude an award for attorneys' fees and costs to either party arising from any future lawsuit filed by CSPA to enforce the Settlement Agreement or otherwise assert claims identified in the 60-Day Notice if the meet and confer provision in Paragraph I.2 is triggered and the parties do not reach a subsequent agreement on BMPs. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court.
6. **Dispute Resolution:** If a dispute under this Agreement arises, or either Party believes that a breach of this Agreement has occurred, the Parties shall informally meet and confer in an effort to expeditiously resolve the dispute. If the informal meeting fails to resolve the dispute, or a meeting does not occur within five (5) days of a request for a meeting, either Party may request a formal meet and confer within ten (10) business by providing written notification to the other Party of a request for a meeting to determine whether a

violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the alleged violation. If, after reasonable efforts by both Parties, the Parties fail to meet and confer or the meet and confer does not result in a mutually agreeable solution, after at least fifteen (15) business days have passed after the formal meet and confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law, including filing a complaint in the United States District Court for the Northern District of California. The Parties shall file a stipulation seeking entry of this Agreement as a consent decree following the filing of any such complaint. Either Party may subsequently bring a motion before the Northern District of California for the limited purposes of enforcement of the terms of this Agreement. Should the United States District Court choose not to enter this Agreement as a consent decree, 1) CSPA may proceed to litigate the filed action consistent with the Tolling Agreement attached hereto as Attachment A and hereby incorporated by reference, and/or 2) either Party shall be entitled to all contractual rights and remedies under the law, including filing an action in an appropriate court in California to enforce this Agreement pursuant to California law. The Parties shall be entitled to seek fees and costs incurred in any such federal or state court action pursuant to the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provisions.

### **III. JURISDICTION**

7. For the purposes of this Agreement, the Parties stipulate that the United States District Court of California, Northern District of California, has jurisdiction over the Parties and subject matter of this Action. The Parties stipulate that venue is appropriate in the Northern District of California and that Solano Garbage will not challenge whether CSPA has standing to bring the Complaint or maintain any subsequent action pursuant to the Dispute Resolution procedures herein.
8. CSPA may submit this Agreement to the U.S. Department of Justice ("DOJ") for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ. In the event DOJ comments negatively on the provisions of this Agreement, the Parties agree to meet and confer to attempt to resolve the issues raised by DOJ. This Agreement shall be in full force and effect during DOJ's review period.

### **IV. WAIVER AND RELEASES**

9. **CSPA Waiver and Release of Noticed Parties and Covenant Not to Sue:** Except as otherwise provided in this Agreement, this Agreement is a full and complete settlement of any and all claims that have been or could have been asserted based on the facts alleged in the 60-Day Notice and all other claims known and unknown existing as of the Effective Date of this Agreement, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for violations occurring on or before the Termination Date. Upon the Effective Date and except as otherwise provided in this Agreement, CSPA agrees that

neither CSPA, its officers, executive staff, members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against Solano Garbage, or its officers, directors, employees, agents, affiliates, successors, assignees, parent companies, or subsidiaries, seeking relief for alleged violations of the Clean Water Act or the General Permit at the Facility based on the facts alleged in the 60-Day Notice and all other claims known and unknown existing as of the date of entry of this Agreement, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for violations occurring on or before the Termination Date. CSPA further agrees that, beginning on the Effective Date, CSPA will not support other lawsuits, by providing financial assistance, personnel time, or any other affirmative actions, against Solano Garbage, or its officers, directors, employees, agents, affiliates, successors, assignees, parent companies, or subsidiaries, that may be proposed by other groups or individuals who would rely upon the citizen suit provisions of the Clean Water Act to challenge Solano Garbage's (or its officers, directors, employees, agents, affiliates, successors, assignees, parent companies, or subsidiaries) compliance with the Clean Water Act or the General Permit at the Facility based on the facts alleged in the 60-Day Notice and all other claims known and unknown existing as of the date of entry of this Agreement, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for violations occurring on or before the Termination Date. The release reserves CSPA's right to file the Complaint as part of the dispute resolution procedure described above in Paragraph 6 or to file a Complaint as provided in Paragraph 1.2 above, including seeking civil penalties accruing after the Effective Date and appropriate declaratory and injunctive relief.

**10. Solano Garbage Waiver and Release of CSPA:** Except as otherwise provided in this Agreement, upon the Effective Date, Solano Garbage, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, and other representatives, releases CSPA and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns and its agents and other representatives from, and waives all claims which arise from or pertain to the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and its resolution via this Agreement. The release reserves Solano Garbage's right to file an answer to any complaint filed by CSPA following the dispute resolution procedure described above in Paragraph 6 or filed pursuant to Paragraph 1.2 and as further conditioned by this Agreement and the attached Tolling Agreement.

**11. The Parties' Mutual Release:** Except as otherwise provided in this Agreement, the Parties, including their respective successors, assigns, officers, agents, employees, attorneys and all persons, firms and corporations having an interest in them, hereby release each other from any and all claims and demands of any kind, nature or description whatsoever, and from all liabilities, damages, injuries, actions or causes of action, either at law or equity, which the Parties may have against each other based on events occurring on or before the Termination Date in connection with the matters in this Agreement or in



the 60-Day Notice. The Parties hereby expressly waive all claims described above, including presently unknown claims contemplated or covered by Section 1542 of the Civil Code of the State of California, the provisions of which also are hereby expressly waived since the date of the 60-Day Notice up to and including the Termination Date. The Parties hereby acknowledge and agree that they understand that this statute provides:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

- 12. No Admission:** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and the Parties expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by either Party of any fact, finding, conclusion, issue of law, or violation of law. Pursuant to Federal Rule of Evidence 408, and any applicable state law, this Agreement shall not be introduced into evidence in any court proceeding to prove or disprove the validity or amount of a disputed claim or to impeach any statement by any Party. This Agreement may, however, be introduced in a court proceeding as necessary to enforce its terms. This paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

## **V. MISCELLANEOUS PROVISIONS**

- 13. Effective Date:** The Effective Date shall be the date on which all the Parties have signed the Agreement.
- 14. Term of Agreement:** The Agreement shall continue in effect from the Effective Date until July 1, 2019, or through the conclusion of any proceeding where CSPA initiates an action in Federal or State court to cure any alleged breach or violation of this Agreement or the CWA prior to July 1, 2019, or until the completion of any payment or affirmative duty required by this Agreement, whichever is the later occurrence (collectively, the "Termination Date").
- 15. Execution in Counterparts:** The Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.
- 16. Construction:** The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

- 17. Authority to Sign:** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Agreement.
- 18. Integrated Agreement:** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein.
- 19. Severability:** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.
- 20. Choice of Law:** This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.
- 21. Full Settlement:** This Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.
- 22. Negotiated Agreement:** The Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.
- 23. Modification of the Agreement:** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.
- 24. Assignment:** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.
- 25. No Third-Party Benefit:** This Agreement is made for the benefit of the Parties and is not intended to benefit any third-party or be enforceable by any third-party.
- 26. Mailing of Documents to CSPA/Notices/Correspondence:** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CSPA pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Bill Jennings  
California Sportfishing Protection Alliance  
3536 Rainier Avenue



Stockton, CA 95204  
E-mail: deltakeep@me.com

With mandatory copies sent to:

Michael Lozeau  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
E-mail: michael@lozeaudrury.com

- 27. Mailing of Documents to Solano Garbage/Notices/Correspondence:** Unless requested otherwise in writing by Solano Garbage, any notices or documents required or provided for by this Agreement or related thereto that are to be provided to Solano Garbage pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Michael Caprio  
Area President, West  
Republic Services  
3620 Blume Drive, Suite 200  
Richmond, CA 94808  
mcaprio@republicservices.com

With mandatory copies sent to:


Tom Bruen  
Law Offices of Thomas M. Bruen  
1990 N. California Blvd. Ste 608  
Walnut Creek, CA. 94596  
E-mail: tbruen@tbsglaw.com

- 28. Facsimile Signatures:** The Parties' signatures to this Agreement transmitted by facsimile or electronic mail transmission shall be deemed original and binding.
- 29. Impossibility of Performance:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without limitation any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. The Parties agree to immediately meet and confer on adjusting any applicable deadline or requirement the performance of which is rendered impossible pursuant to this provision. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship or inability to pay.

The Settling Parties hereby enter into this Agreement.

Date: March 2, 2018

SOLANO GARBAGE COMPANY

  
By: John Nickerson  
Title: Vice President

Date: \_\_\_\_\_, 2018

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

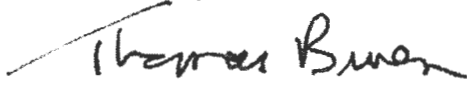
\_\_\_\_\_  
By: Bill Jennings  
Title: Executive Director

**APPROVED AS TO FORM:**

For SOLANO GARBAGE COMPANY

Date: \_\_\_\_\_, 2018

LAW OFFICES OF THOMAS M. BRUEN,  
A Professional Corporation

  
By: Thomas M. Bruen, Esq.

For CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

Date: \_\_\_\_\_, 2018

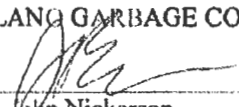
LOZEAU DRURY LLP

\_\_\_\_\_  
By: Michael Lozeau, Esq.

The Settling Parties hereby enter into this Agreement.

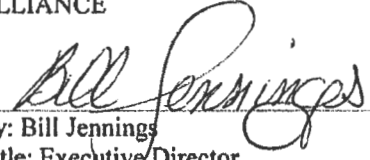
Date: March 2, 2018

SOLANO GARBAGE COMPANY

  
By: John Nickerson  
Title: Vice President

Date: 3 March, 2018

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

  
By: Bill Jennings  
Title: Executive Director

**APPROVED AS TO FORM:**

For SOLANO GARBAGE COMPANY

Date: \_\_\_\_\_, 2018

LAW OFFICES OF THOMAS M. BRUEN,  
A Professional Corporation

  
By: Thomas M. Bruen, Esq.

For CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

Date: \_\_\_\_\_, 2018

LOZEAU DRURY LLP

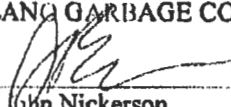
By: Michael Lozeau, Esq.



The Settling Parties hereby enter into this Agreement.

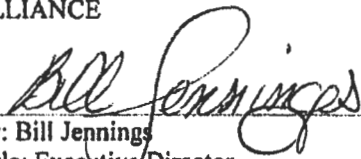
Date: March 2, 2018

SOLANO GARBAGE COMPANY

By:   
Title: Vice President

Date: 3 March, 2018

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

By:   
Title: Executive Director

APPROVED AS TO FORM:

For SOLANO GARBAGE COMPANY

Date: \_\_\_\_\_, 2018

LAW OFFICES OF THOMAS M. BRUEN,  
A Professional Corporation

By:   
Thomas M. Bruen, Esq.

For CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

Date: March 3, 2018

LOZEAU DRURY LLP

By:   
Michael Lozeau, Esq.

## **TOLLING AGREEMENT**

This Tolling Agreement (the "Tolling Agreement") is made effective as of the 26th day of January, 2018, (the "Effective Date") by and between the California Sportfishing Protection Alliance ("CSPA") and Solano Garbage Company ("Solano Garbage"). CSPA and Solano Garbage are collectively referred to as the "Parties."

**WHEREAS**, on November 27, 2017, CSPA served Solano Garbage with a notice of intent to file suit ("60-Day Notice") under Sections 505(a)(1) and (f) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the General Permit;

**WHEREAS**, CSPA and Solano Garbage have come to a mutual agreement ("Settlement Agreement" or "Agreement") regarding the resolution of CSPA's alleged Claims against Solano Garbage in the 60-Day Notice at Solano Garbage's facility located at 2901 Industrial Court in Fairfield, CA 92337 (the "Facility"). This Settlement Agreement was entered into by the Parties in January 2018, and will be in effect until at least July 1, 2019;

**WHEREAS**, the Parties have the desire to work together to fulfill the obligations set forth in the Settlement Agreement while it is in effect;

**WHEREAS**, the Settlement Agreement specifies a dispute resolution process for the resolution of any disputes between the Parties. If the Parties cannot resolve a dispute via the dispute resolution process in the Settlement Agreement, either Party shall be entitled to all rights and remedies under the law, including filing a complaint in the United States District Court for the Northern District of California ("N.D. Cal."), stipulating for the Court to enter the Settlement Agreement as a consent decree following the filing of any such complaint, and bringing a motion before the N.D. Cal. for the limited purposes of enforcement of the terms of the Settlement Agreement;

**WHEREAS**, the Settlement Agreement also provides for a contingency allowing CSPA to proceed with a citizen suit in the Northern District of California pursuing the claims set forth in the 60-Day Notice if the Regional Water Quality Control Board or another governmental entity objects to the retention basin proposed by Solano Garbage and the Parties cannot agree

upon subsequent best management practice(s) or an alternative addressing the Regional Board's or other governmental entity's objections;

**WHEREAS**, during the period of this Agreement, the Parties wish to toll any applicable statute of limitations or other Timing Defense (as defined below) associated with storm water discharge from the Facility, existing on the Effective Date of this Tolling Agreement as alleged in the 60-Day Notice, and related to the filing of a complaint and the Settlement Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements herein, the Parties covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:
  - a. "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, of CSPA against Solano Garbage relating to storm water compliance and/or storm water discharge at or from Solano Garbage's Facility as alleged in the 60-Day Notice, including claims alleged pursuant to the federal Clean Water Act, and existing as of the Effective Date of this Tolling Agreement and up to and including the Expiration Date of this Tolling Agreement. Claims shall not include any claims and/or causes of action arising out of any facts relating to storm water compliance and/or storm water discharge at or from Solano Garbage's Facility that occur after the Expiration Date of this Tolling Agreement.
  - b. "Tolling Period" shall mean the period from and including the Effective Date of this Tolling Agreement until and including the Expiration Date (as defined below) of this Tolling Agreement.
  - c. "Expiration Date" shall mean July 1, 2019, or the conclusion date of any proceeding initiated by CSPA in Federal or State court to cure any alleged breach or violation of the Settlement Agreement or to enforce any violation alleged in the 60-Day Notice to the extent permitted under the Settlement Agreement, or until the completion of any payment or affirmative duty required by the Settlement Agreement, whichever is the later occurrence.
  - d. "Timing Defenses" shall mean any defenses to CSPA's Claims that Solano Garbage (and/or any parent company, subsidiaries, predecessors and affiliates)



may have, including defenses based upon: 1) any defenses available at law or equity, including defenses based upon any statute of limitations, that the time period for CSPA to file suit has passed, 2) equitable limitations (including without limitation laches) that the time period for CSPA to file suit has passed, 3) ripeness/mootness, 4) *Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987) and related cases, 5) agency preemption of any civil penalties pursuant to 33 U.S.C. § 1319(g), and/or 6) any failure of CSPA to provide a notice of intent to sue, or to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. CSPA and Solano Garbage stipulate, covenant and agree that Solano Garbage's Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.
3. The running of all applicable Timing Defenses shall Commence again on the Expiration Date, unless there is an extension of this Tolling Agreement executed in writing by and on behalf of the Parties, or unless or until the filing of a complaint in the N.D. Cal. or other appropriate court.
4. This Agreement does not revive otherwise lapsed or already expired violations or defenses of either Party.
5. This Tolling Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.
6. On or after the Expiration Date of this Tolling Agreement, the Parties shall be entitled to assert any Timing Defenses or other defenses accruing on or after the Expiration Date, if any, subject to the terms of this Tolling Agreement.
7. CSPA shall not seek any relief against Solano Garbage in an action commenced by the filing of a complaint over and above the enforcement of the Settlement Agreement as a Consent Decree, unless following the filing of such complaint, the N.D. Cal rejects the entry of the Settlement Agreement as a Consent Decree (or the equivalent), in which case CSPA may seek relief consistent with the terms of the Settlement Agreement. To the extent Solano Garbage does not install the retention basin described in Paragraph

I.1 of the Settlement Agreement because the Regional Board or any other governmental entity has objected to or restrained construction of the retention and the parties have failed to agree on subsequent best management practice(s) as provided in the Settlement Agreement or an alternative addressing the Regional Board's or other governmental entity's objections, then CSPA may file a Complaint against Solano Garbage for any appropriate relief and the implementation of best management practices included in the 60-Day Notice. During the Tolling Period, CSPA's right to enforce the Settlement Agreement as a Consent Decree or otherwise, or the filing of any Complaint addressing violations set forth in the 60-Day Notice, shall not be limited by any Timing Defenses asserted by Solano Garbage. Nothing in this Tolling Agreement shall limit the right of CSPA to seek other remedies against Solano Garbage consistent with the Settlement Agreement provided that CSPA's right to pursue such claims, if any, shall not be tolled by this Tolling Agreement and Solano Garbage shall be entitled to assert Timing Defenses, if any, as defenses against any such action.

8. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any of CSPA's Claims against Solano Garbage or the merits of any of Solano Garbage's defenses to any of CSPA's Claims. Nothing in this Tolling Agreement shall be construed as, and the Parties expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Tolling Agreement constitute or be construed as an admission by either Party of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Tolling Agreement.
9. This Tolling Agreement may not be extended, altered or amended except by written agreement executed by both Parties.
10. This Tolling Agreement is made for the benefit of the Parties and is not intended to benefit any third-party or to be enforceable by any third-party.
11. This Tolling Agreement may not be filed with any court, including the N.D. Cal., and/or introduced into evidence, except as necessary to prove the existence of the tolled

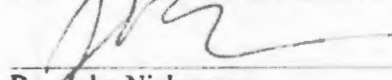
Claims and/or to object to the raising of any Timing Defenses addressed by this Tolling Agreement.

12. This Tolling Agreement may be executed in one or more original or facsimile counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

**SO AGREED.**

Date: March 2, 2018

SOLANO GARBAGE COMPANY

  
By: John Nickerson  
Title: Vice President

Date: \_\_\_\_\_, 2018

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

By: Bill Jennings  
Title: Executive Director

**APPROVED AS TO FORM:**

For SOLANO GARBAGE COMPANY

Date: \_\_\_\_\_, 2018

LAW OFFICES OF THOMAS M. BRUEN,  
A Professional corporation

  
By: Thomas M. Bruen, Esq.

[SIGNATURES CONTINUED ON NEXT PAGE.]



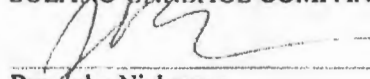
Claims and/or to object to the raising of any Timing Defenses addressed by this Tolling Agreement.

12. This Tolling Agreement may be executed in one or more original or facsimile counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

**SO AGREED.**

Date: March 2, 2018

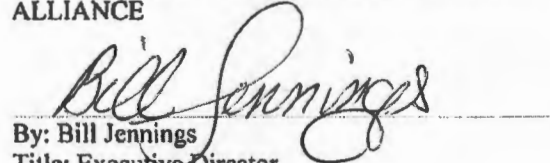
SOLANO GARBAGE COMPANY



By: John Nickerson  
Title: Vice President

Date: 3 March, 2018

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE



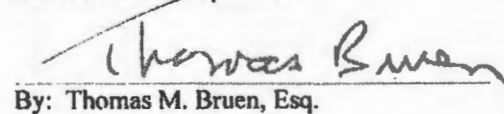
By: Bill Jennings  
Title: Executive Director

**APPROVED AS TO FORM:**

For SOLANO GARBAGE COMPANY

Date: \_\_\_\_\_, 2018

LAW OFFICES OF THOMAS M. BRUEN,  
A Professional corporation



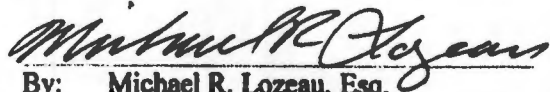
By: Thomas M. Bruen, Esq.

[SIGNATURES CONTINUED ON NEXT PAGE.]

Date: March 3, 2018

For CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

LOZEAU DRURY LLP

  
By: Michael R. Lozeau, Esq.